

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Century-TCI California, L.P.	)	
	)	CSR 5886-E
Adelphia Cablevision of Fontana LLC	)	
	)	
Adelphia Cablevision of Inland Empire LLC	)	
	)	
Petition for Determination of Effective	)	
Competition in Various California Communities	)	
	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: February 13, 2003**

**Released: February 21, 2003**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Century-TCI California, L.P., Adelphia Cablevision of Fontana LLC, and Adelphia Cablevision of Inland Empire LLC d/b/a Adelphia Cable Communications ("Adelphia") has filed with the Commission a petition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended ("Communications Act"), and Sections 76.7(a)(1) and 76.905(b)(2) of the Commission's rules for a determination of effective competition in seven California communities (the "Communities").<sup>1</sup> Adelphia alleges that its' cable systems serving the Communities are subject to effective competition and therefore exempt from cable rate regulation because of competing services provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc. ("DirecTV") and DISH Network ("DISH"). In addition to the DBS providers, Charter Communications ("Charter") is a competing provider in one of the Communities. No opposition to the petition was filed.

**II. DISCUSSION**

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>2</sup> as that term is defined by Section 76.905 of the Commission's rules.<sup>3</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist

<sup>1</sup> See 47 U.S.C. § 543(a)(1); 47 C.F.R. §§ 76.7(a)(1) and 76.905(b)(2). The Communities are Rancho Cucamonga, Chino, Chino Hills, Fontana, Montclair, Ontario and Upland. The cities of Chino, Chino Hills, and Fontana are certified to regulate basic cable service rates.

<sup>2</sup> 47 C.F.R. § 76.906.

<sup>3</sup> 47 C.F.R. § 76.905.

with evidence that effective competition is present within the relevant franchise area.<sup>4</sup> Based on the record in this proceeding, Adelphia has met this burden.

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”) each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds fifteen percent of the households in the franchise area.<sup>5</sup>

4. Turning to the first prong of the competing provider test, DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.<sup>6</sup> Adelphia has provided evidence of the advertising of DBS service in the news media serving the seven Communities.<sup>7</sup> With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer at least 12 channels of video programming, including at least one non-broadcast channel.<sup>8</sup> We find that Adelphia has demonstrated that the communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Adelphia also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in the Communities, that there exists no regulatory, technical, or other impediments to households within the Communities taking the services of the DBS providers, and that potential subscribers in the Communities have been made reasonably aware of the MVPD services of DirecTV and DISH.<sup>9</sup> Therefore, the first prong of the competing provider test is satisfied.

5. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Adelphia sought to determine the competing provider penetration in its franchise areas by purchasing a report from SkyTrends that identified the number of subscribers attributable to the DBS providers within the Communities on a five-digit zip code basis.<sup>10</sup>

6. Adelphia asserts that, except for the City of Rancho Cucamonga, it is the largest MVPD in the remaining six Communities because Adelphia's subscribership exceeds the aggregate DBS subscribership for those franchise areas.<sup>11</sup> Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data,<sup>12</sup> we find that Adelphia has demonstrated that the number of households subscribing to programming services offered by MVPDs,

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<sup>4</sup> See 47 U.S.C. §§ 76.906 and 907.

<sup>5</sup> 47 U.S.C. §543(1)(1)(B); *see also* 47 C.F.R. §76.905(b)(2).

<sup>6</sup> *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

<sup>7</sup> *See* Adelphia Petition at 4-5 and Exhibit A.

<sup>8</sup> *See* 47 C.F.R. §76.905(g); *see also* Adelphia Petition at 5 and Exhibits B, C, and D.

<sup>9</sup> Adelphia Petition at 5.

<sup>10</sup> *Id.* at 7 and Exhibit F.

<sup>11</sup> *Id.* at 7.

<sup>12</sup> *Id.* and Exhibit G.

other than the largest MVPD, exceeds 15 percent of the households in these six Communities. Therefore, the second prong of the competing provider test is satisfied as to these six Communities. Based on the foregoing, we concluded that Adelphia has submitted sufficient evidence demonstrating that its cable systems serving the six Communities set forth on Attachment A are subject to effective competition.

7. In the City of Rancho Cucamonga, Charter is the largest MVPD with 20,791 subscribers out of the 40,863 Census 2000 Rancho Cucamonga households.<sup>13</sup> Adelphia and the DBS providers have a combined penetration rate of 34.3 percent.<sup>14</sup> Based on this record, we find that Adelphia has demonstrated that the number of households subscribing to programming services offered by MVPDs other than the largest MVPD, exceeds 15 percent of the households in its City of Rancho Cucamonga franchise area and that Adelphia is subject to effective competition in its Rancho Cucamonga franchise area.

### III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by Century-TCI California, L.P., Adelphia Cablevision of Fontana LLC, and Adelphia Cablevision of Inland Empire LLC d/b/a Adelphia Cable Communications **IS GRANTED**.

9. **IT IS FURTHER ORDERED** that the certifications of Chino, Chino Hills, and Fontana, California to regulate basic cable service rates **ARE REVOKED**.

10. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>15</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker  
Deputy Chief, Policy Division, Media Bureau

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<sup>13</sup> Adelphia Supplement at 2.

<sup>14</sup> *Id.*; Adelphia Petition at 9-10 (14,025 combined Adelphia/DBS subscribers ÷ 40,863 Rancho Cucamonga households = 34.3%).

<sup>15</sup> 47 C.F.R. § 0.283.

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**COMMUNITIES SERVED BY CENTURY-TCI CALIFORNIA, L.P., ADELPHIA  
CABLEVISION OF FONTANA LLC, AND ADELPHIA CABLEVISION OF INLAND EMPIRE  
LLC D/B/A ADELPHIA CABLE COMMUNICATIONS**

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Households<sup>+</sup></b>	<b>Estimated DBS Subscribers<sup>+</sup></b>	<b>Adelphia Subscribers<sup>+</sup></b>
Chino	CA1151	25.4%	17,304	4,399	7,406
Chino Hills	CA1226	17.9%	20,039	3,591	10,539
Fontana	CA0821	31.3%	34,014	10,649	16,421
Montclair	CA0466	22.7%	8,800	1,996	2,864
Ontario	CA0463	22.0%	43,525	9,590	14,591
Upland	CA0464	23.0%	24,551	5,653	11,154

\*CPR = Percent of competitive DBS penetration rate.

<sup>+</sup>See Petition at 7-10 and Exhibits G, F, and E.